CONSPIRACY — CRIMINAL LIABILITY — TRIAL WHERE OVERT ACT PERFORMED. — The defendants conspired to defraud the United States of government lands. All the conspiring occurred on the Pacific Coast, but the overt acts were committed in the District of Columbia. The prisoners were tried and convicted in the District. *Held*, that the District of Columbia court has jurisdiction. *Hyde* v. *United States*, 32 Sup. Ct. 793.

The Sixth Amendment of the Constitution provides that all crimes shall be prosecuted in the "district wherein the crime shall have been committed." Like the other amendments comprising the "Bill of Rights" this is construed not as announcing novel doctrines but as reaffirming old principles. See *Robertson* v. *Baldwin*, 165 U. S. 275, 281, 17 Sup. Ct. 326, 329; *Mattox* v. *United States*, 156 U. S. 237, 243, 15 Sup. Ct. 337, 340. At common law the venue could be laid either in the county of the conspiring or in the county of an overt act in furtherance thereof. *Rex* v. *Brisac*, 4 East 164. See *People* v. *Mather*, 4 Wend. (N. Y.) 230, 261. But see *Regina* v. *Best*, 1 Salk. 174. The principal case does not rest solely upon this common-law rule, for under the federal statute an overt act must be proved. U. S. COMP. STAT. 1901, § 5440. Since by statute an offense begun in one district and completed in another may be prosecuted in either, it would seem logically to follow that there would be jurisdiction where an overt act was performed. *Robinson* v. *United States*, 172 Fed. 105. But there are *dicta* that even under the statute the overt act forms no part of the crime and merely affords a *locus pœnitentiæ*. See *United States* v. *Britton*, 108 U. S. 199, 204, 2 Sup. Ct. 534; *Hyde* v. *Shine*, 199 U. S. 62, 76, 25 Sup. Ct. 760, 761. It seems a paradox to hold the overt act essential to complete the crime but yet no part of it. Moreover, since the question in the principal case is the procedural one of venue, and does not necessarily involve the jurisdiction of the sovereign power, the doubt of the minority seems unjustified.

CONSTITUTIONAL LAW — PERSONAL RIGHTS: CIVIL, POLITICAL, AND RELIGIOUS — EMPLOYER'S RIGHT TO REQUIRE EMPLOYEE NOT TO REMAIN IN TRADE UNION. — A statute made it a crime for an employer to require an agreement to have no connection with any labor union as a condition of keeping or securing employment. *Held*, that the statute is constitutional. *State* v. *Coppage*, 125 Pac. 8 (Kan.). *Contra*, *State ex rel. Smith* v. *Daniels*, 136 N. W. 584 (Minn.).

The power, subject to police regulation, to make or break contracts of personal service without criminal liability is secured by the Constitution. *Bailey* v. *Alabama*, 219 U. S. 219, 31 Sup. Ct. 145; *Gillespie* v. *People*, 188 Ill. 176, 58 N. E. 1007. It has been suggested in an analogous case that use of the power as a means of coercion may destroy the immunity. See 20 HARV. L. REV. 253, 270. But coercion is no more involved in a discharge for not agreeing to be non-union than in a discharge expressly because of union membership. And statutes forbidding discharge on the latter basis are always held unconstitutional. *Adair* v. *United States*, 208 U. S. 161, 28 Sup. Ct. 277; *State ex rel. Zillmer* v. *Kreutzberg*, 114 Wis. 530, 90 N. W. 1098. The decision of the Kansas court, therefore, seems wrong. *People* v. *Marcus*, 185 N. Y. 257, 77 N. E. 1073. Labor unions in this country are recognized as clearly legal. See 25 HARV. L. REV. 465. But they are hardly so favored by the law that the foundation of a contract not to join one could be made criminal as against public policy. In the case of public service companies, however, termination of the contract of employment could perhaps, where there is public necessity, be regulated with, or even without, legislation. See *Arthur* v. *Oakes*, 63 Fed. 310, 319; *Farmers' Loan & Trust Co.* v. *Northern Pacific R. Co.*, 60 Fed. 803, 813.

CONTRACTS — REMEDIES FOR BREACH OF CONTRACT — RECOVERY UNDER CONTRACT AFTER BREACH. — The defendant agreed to pay a certain sum in

monthly installments, in consideration of the plaintiff's promise to give instructions by correspondence in engineering until the defendant was qualified for a diploma. After two installments the defendant repudiated the contract. *Held*, that the plaintiff may recover for all installments as they become due. *International Correspondence Schools* v. *Ayres*, 106 L. T. R. 845 (Eng., K. B. D., Apr. 30, 1912).

The soundness of the decision in the principal case must rest on the ground that the defendant relied upon his remedy and did not intend to make performance a condition precedent. There has been such a holding in the somewhat analogous cases of contracts where the date of payment precedes delivery, and in insurance or other aleatory contracts. *Mattock* v. *Kinglake*, 10 A. & E. 50; *Christie* v. *Borelly*, 29 L. J. C. P. 153. In these cases there has been a tendency in England to enforce the promise as independent. *Dunlop* v. *Grote*, 2 C. & K. 153. See SALE OF GOODS ACT, 1893 (56 & 57 VICT. c. 71), § 49. Perhaps a more natural interpretation of a contract such as that in the principal case would conceive of the parties as contemplating the ordinary equivalent exchange of performances. *International Text-Book Co.* v. *Jones*, 166 Mich. 86, 131 N. W. 98. In schools where the cost of maintenance is constant, reduction of damages would be impracticable. *Collins* v. *Price*, 5 Bing. 132. But, on the facts presented by the principal case, from the agreed price could be deducted the expense in postage and typewriting, which the repudiation saved the school. *International Text-Book Co.* v. *Schulte*, 151 Mich. 149, 114 N. W. 1031. It is submitted that where, as here, no clearly defined intention appears, the equitable result would be to regard each performance as dependent on the other.

CORPORATIONS — STOCKHOLDERS — RIGHTS INCIDENT TO MEMBERSHIP — PREFERRED STOCKHOLDER'S RIGHT OF PREËMPTION. — A corporation voted to increase its capital by issuing common stock and giving a right of preëmption at par to common stockholders only. A preferred stockholder brought a bill to restrain the issue unless the preferred stockholders were allowed to subscribe on the same terms as the common stockholders. His motion for an injunction *pendente lite* was denied "but upon condition that he be allowed to subscribe for an equivalent amount of preferred stock at par." The preferred stockholder appealed. *Held*, that the order be affirmed. *Russell* v. *American Gas and Electric Co.*, 47 N. Y. L. J. 2047 (N. Y., App. Div.). See NOTES, p. 75.

CRIMINAL LAW — FORMER JEOPARDY — SEVERER PUNISHMENT FOR HABITUAL CRIMINAL. — The defendant after conviction and sentence for grand larceny was brought before another court in a separate proceeding instituted according to the West Virginia Code by information charging him with prior conviction. Upon the establishment of his identity he was sentenced with additional punishment. *Held*, that the defendant is not deprived of his constitutional rights. *Graham* v. *West Virginia*, 224 U. S. 616, 32 Sup. Ct. 583.

The infliction of severer punishment on old offenders when the former conviction is alleged in the indictment has been held not repugnant to the jeopardy clause of the constitution. *Moore* v. *Missouri*, 159 U. S. 673, 16 Sup. Ct. 179. The reason is that the additional penalty is not imposed on the former crimes but on the later offense rendered more serious by the fact of former convictions. No distinction is drawn where the identity of the defendant is established in a later proceeding prosecuted upon an information, such question being distinct from the issue of the later conviction. *Ross' Case*, 2 Pick. (Mass.) 165. That the additional punishment for the later offense is imposed subsequent to sentence for that offense does not place the defendant in double jeopardy, for it is merely a revision of the punishment given by the state for a crime, the commission of which is not in question; it is not a re-trial for the same offense.